

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-cr-20766

v.

Honorable Thomas L. Ludington

ANTHONY TYRONE SNOW,

Defendant.

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**ORDER SUSTAINING OBJECTION, REJECTING REPORT AND  
RECOMMENDATION, AND REFERRING MATTER TO MAGISTRATE JUDGE FOR  
FURTHER CONSIDERATION**

On October 21, 2013, Petitioner Anthony Tyrone Snow pled guilty to Count 1 of the Information charging him with distribution of crack cocaine in violation of 21 U.S.C. § 841(a)(1). *See* ECF No. 14. On March 25, 2014, judgment was entered and Petitioner was sentenced as a career offender to 140 months' incarceration. *See* ECF No. 23. Petitioner did not file any appeal.

On April 25, 2015 Petitioner filed a motion to vacate his sentence under 28, U.S.C. § 2255, arguing that his sentence was rendered unconstitutional by the Supreme Court's decision in *Johnson v. United States* and its progeny. *See Johnson v. United States* 135 S. Ct. 2551 (2015) (striking down the residual clause of the Armed Career Criminal Act as unconstitutionally vague). That motion was referred to Magistrate Judge Patricia T. Morris for report and recommendation. *See* ECF No. 29.

On November 2, 2016, before a decision was reached on Petitioner Snow's first § 2255, Snow filed a second § 2255 arguing that his controlled substance offenses were not qualifying

predicate offenses within the meaning of the Career Offender Guidelines in light of the Supreme Court's decision in *Mathis v. United States*, 136 S.Ct. 2243 (2016) (holding that, in determining whether a prior state court conviction counts toward a federal sentence enhancement, courts must apply the categorical approach – not the modified categorical approach – where a criminal statute establishes various means for satisfying a single element). Petitioner's motion was construed as a motion to supplement his pending § 2255 and referred to the magistrate judge. *See* ECF No. 43. The magistrate judge then granted Petitioner's motion to supplement. *See* ECF No. 44.

On November 17, 2016 the magistrate judge issued a report and recommendation finding *Johnson* and its progeny inapplicable to Petitioner Snow. *See* ECF No. 45. The report did not address Petitioner's arguments under *Mathis*. Petitioner Snow timely filed an objection on November 29, 2016 arguing that the magistrate judge erred in failing to address his supplementary arguments under *Mathis*. *See* ECF No. 46. Because Snow is correct, his objection will be sustained and the report and recommendation rejected.

Accordingly, it is **ORDERED** that Defendant Snow's objection, ECF No. 46, is **SUSTAINED**.

It is further **ORDERED** that the report and recommendation, ECF No. 45, is **REJECTED**.

It is further **ORDERED** that the matter is **REFERRED** to Magistrate Judge Morris for reconsideration of Petitioner Snow's motion to vacate under 28 U.S.C. § 2255 in light of the arguments raised in his supplement, ECF Nos. 26, 41.

Dated: December 2, 2016

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 2, 2016.

s/Michael A. Sian  
MICHAEL A. SIAN, Case Manager